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Carolyn J. Johnsen – 011894
cjohansen@jsslaw.com
Bradley J. Stevens – 006723
bstevens@jsslaw.com
Todd M. Adkins - 025338
tadkins@jsslaw.com

JENNINGS, STROUSS & SALMON, P.L.C.

A Professional Limited Liability Company
The Collier Center, 11th Floor
201 East Washington Street
Phoenix, Arizona 85004-2385
Telephone: (602) 262-5911
Facsimile: (602) 495-2696

Attorneys for the Debtor

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:

Mortgages Ltd.,

Debtor.

Chapter 11 Proceedings

Case No. 2:08-bk-07465-RJH

**DECLARATION OF RICHARD
FELDHEIM IN SUPPORT OF
EXPEDITED MOTION FOR
APPROVAL OF DEBTOR-IN-
POSSESSION FINANCING IN
ACCORDANCE WITH
BANKRUPTCY CODE SECTIONS
364(c) AND (d); AND SCHEDULING
A FINAL HEARING PURSUANT TO
BANKRUPTCY RULE 4001**

**Hearing Date: August 6, 2008
Hearing Time: 2:30 pm
Location: Courtroom 603,
230 N. First Avenue,
Phoenix, Arizona**

This Declaration is filed by Richard Feldheim on behalf of Mortgages Ltd.
("MLtd"). I respectfully submit this declaration in connection with the *Expedited Motion
for Approval of Debtor-In-Possession Financing in Accordance with Bankruptcy Code*

1 funds for loans that it originates. Mortgages Ltd underwrites loans for commercial,
2 industrial and residential properties for acquisition, entitlement, development,
3 construction and investment. All of the Mortgage Ltd.'s loans are short-term loans
4 secured by real estate, including multifamily residential projects, office buildings, and
5 mixed-use projects within Arizona.

6 5. As of the Petition Date, MLtd had outstanding loans of approximately \$894
7 million in approximately sixty-six (66) real estate projects. A portion of the MLtd loans
8 are made directly on behalf of itself and investors, where MLtd and its investors receive
9 direct, "pass through" fractional loan and lien interests in real estate collateral (the
10 "Pass Through Participation"). Each investor in a Pass Through Participation program
11 individually acquires a participation interest in the loan or loans selected and signs an
12 Agency Agreement with MLtd, which appoints MLtd as the investor's agent. The
13 investor is assigned a beneficial interest in the loan(s) and security for the loan, and an
14 assignment of interest is recorded to reflect that. MLtd is granted a power of attorney
15 under the Agency Agreement to sign and deliver documents "to effectuate the intent" of
16 the Agency Agreement, or to sign, file and record all documents that MLtd as "Agent
17 deems necessary to protect Participant's interest and/or pursue Participant's remedies,"
18 among others. The Agency Agreement further provides:

19 1 - "Participant authorizes Agent to perform all of the tasks described in this
20 Agreement on Participant's behalf, at Agent's sole discretion," and irrevocably appoints
Agent as the Participant's attorney in fact with signing authority.

21 1(a) - the Agent's authority in account servicing includes "at the sole discretion of
Agent," the authority to "(9) Sign, file and record all documents which are reasonable or
22 desirable to facilitate servicing of the Loans and administration of the Programs . . ."

23 1(b) - the Agent's collection authority includes "at Agent's sole discretion," the
authority to "(4) Negotiate, accept and/or process partial payments of amounts due and
24 owing under the Loan Documents," and to "(9) Amend the Loan Documents."

25 6. In addition, MLtd loans are made through Opportunity Funds (each an "MP
26 Fund"), where investor money is pooled and used to make loans through which the MP
Funds themselves receive fractional loan and lien interests in real estate collateral. Each

1 MP Fund is a separate limited liability company. MLtd is the sole manager of each MP
2 Fund, and each investor becomes a member of the MP Fund and is subject to the
3 operating agreement. Pursuant to the MP Fund operating agreement, with limited
4 exceptions, MLtd, as manager of the MP Fund, has the exclusive right to manage and
5 control the business and affairs of the MP Fund and to act on its behalf. Third parties are
6 expressly entitled to rely on the actions of the manager when dealing with the MP Fund.
7 Accordingly, MLtd has very broad authority to act on behalf of the investors that have
8 participated in the MP Funds, subject to the fiduciary obligation of MLtd to act in the
9 best interest of the MP Fund's members in dealing with the MP Fund's loans.

10 Examples of provisions from operating agreements governing the MP Funds
11 include:

12 6.2(a) - "the Manager shall have full, exclusive, and complete power to manage
13 and control the business and affairs of the Company and shall have all of the rights and
14 powers provided to a manager of a limited liability company by law, including the power
15 to execute instruments and documents, to dispose of any real property held in the name of
16 the Company, and to take any other actions on behalf of the Company."

15 6.2(b) - Any "third party shall be entitled to rely on all actions of the Manager and
16 shall be entitled to deal with the Manager as if it were the sole party in interest therein,
17 both legally and beneficially."

16 6.3 - Duties and responsibilities of the manager include "(b) Protecting the interest
17 of the company and its property, improvements, and other assets."

18 7. MLtd also manages a Value to Loan ("VTL") program and a Revenue
19 Opportunity ("RevOps") program. RevOps investors sign the same Agency Agreement
20 and New Investor Subscription Agreement as investors in any other Pass Through
21 Participation program. However, there is additionally a Loan Program Purchase
22 Agreement relating to the Rev Ops program. The Loan Program Purchase Agreement
23 grants authority to MLtd, including a power of attorney, to execute and deliver
24 documents "which the Company deems appropriate or necessary to carry on the objects
25 and intent of this Agreement and to administer the Revolving Opportunity Loan Program
26 ..."

1 approximately \$6.45 million secured by 21 acres in Fountain Hills, Arizona and 40 acres
2 in the Troon development in Scottsdale, Arizona. MLtd owes Artemis Realty Capital
3 approximately \$2.0 million secured by a first lien on a parcel of real property at Central
4 and Highland Avenues in Phoenix (the "Central & Highland Property"), and MLtd owes
5 Southwest Value Partners \$500,000, secured by a junior lien on the Central & Highland
6 Property, a lien on the interest of MLtd in the Chateaux on Central project, and an
7 assignment of the approximately \$5.76 million loan and lien interest of MLtd on the
8 River Run Golf Course in Eager, Arizona.

9 14. Other than ordinary monthly operating expenses (for utilities, employee
10 wages, rent, and supplies), MLtd's unsecured debt consists of a series of loans from
11 Radical Bunny, LLC ("Radical Bunny"). According to a letter dated June 19, 2008,
12 Radical Bunny claims that it is owned approximately \$196,617,000 from MLtd.

13 **Principal Assets of MLtd**

14 15. The assets of MLtd consist primarily of its interests in loan receivables
15 from borrowers (with a book value of approximately \$167.9 million), real estate owned
16 (with a book value of approximately \$38.5 million), a loan receivable from the SM Coles,
17 LLC (with a book value of approximately \$5.5 million), and servicing rights for pass
18 through loans and management interests and rights in the MP Funds.

19 **Financial Accountability and Regulatory Oversight**

20 16. In business since 1963, MLtd holds the oldest mortgage banking license in
21 the state of Arizona. The MLtd mortgage banking license is subject to regulation and
22 oversight provided by the Arizona Department of Financial Institutions ("ADFI"). Each
23 year, and subject to review and audit by the ADFI, MLtd's mortgage banking license
24 must be renewed. For the past several weeks, MLtd has cooperated with representatives
25 of ADFI who are performing a thorough audit of the company's books and records in
26 conjunction with the annual renewal of MLtd's mortgage banking license.

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Events Leading To The MLtd Bankruptcy

17. Like virtually every other real estate lender in Arizona (and throughout the country), MLtd's business has been affected adversely by the credit crisis and the real estate down turn that has gripped the country since early 2007. Over the course of the last year or so, a disproportionate number of MLtd's borrowers have defaulted on their loans. The credit crisis and the real estate down turn also have made MLtd investors reluctant to place their money in real estate loans. Defaults by Borrowers under existing loans and the reluctance of MLtd investors to invest in new real estate loans have created for MLtd its own liquidity challenges, which are being addressed by financing (the "DIP Financing") that is being sought pursuant to this Motion. The requested DIP Financing is described in more detail below.

18. Financial challenges facing MLtd have been compounded by a small number of borrowers who have adopted a "best defense is a good offense" litigation approach to deal with their own defaults and financial struggles. In this regard, Rightpath Limited Development Group and its affiliates and guarantors filed recently a pre-emptive suit against MLtd in an attempt to delay repayment of over \$109 million owing on MLtd loans.¹ Similarly, a borrower (Grace Communities), that owes an aggregate amount of over \$120 million in defaulted MLtd loans, filed the involuntary Chapter 7 bankruptcy petition against MLtd on June 20, 2008, apparently in an attempt to short circuit collection efforts that MLtd was about to commence against Grace and its principals who guaranteed the over \$120 million in defaulted loans.

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Efforts Undertaken to Avoid Bankruptcy

19. Over the course of the past several weeks, Mortgage Ltd.'s management has met (often around the clock) to discuss the future of the company. On June 10, 2008,

¹ The Rightpath suit is pending as Case No. CV2008-11878. On June 17, 2008, MLtd filed a motion to dismiss the Rightpath suit. The Rightpath suit was removed to this Court for ultimate determination.

1 management held a telephone presentation with investors where the issues facing the
2 company were discussed, including the sudden and unexpected death of Mr. Coles,
3 pending litigation,² and prospective returns to investors. In an effort to address the issues
4 facing the Company, management decided to temporarily suspend loan origination
5 activities, development projects, and soliciting funds from investors for placement in new
6 loans. In an attempt to cut costs, MLtd reduced its employees from 42 to 25.

7 20. Realizing that there are some benefits that can be obtained by remaining in
8 bankruptcy (including the receipt of the DIP Financing that could pave the way to a
9 successful reorganization of the Debtor), MLtd decided to convert the involuntary
10 Chapter 7 proceeding into a voluntary Chapter 11 case. The Order of Conversion was
11 entered by the Court on June 24, 2008.

12 The DIP Financing

13 21. During the last several weeks I have spoken with numerous parties with
14 respect to providing financing to the company for working capital and construction
15 funding and I have conferred with the company's legal counsel with respect to such
16 funding. The parties with whom I have communicated are Americapital, LLC; HML,
17 LLC; Goldenbridge Acquisition Holdings II, LLC; Loan Star Funds; Vision Capital
18 Partners; Mountain Funding; Cerberus Capital; RBL (Rightpath); Mark Googins; and
19 HomeFed.

20 24. I concluded that the best proposal from the company's perspective was
21 from Stratera Portfolio Advisors, LLC ("Stratera"). The agreement the company reached
22 with Stratera is set out in the Term Sheet attached to the Motion. The Term Sheet was
23 negotiated and agreed to in good faith and at arms' length.

24 25. In reaching the decision to enter into the Term Sheet, I considered the

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26 ² Remarkably, only a single investor (a husband and wife), out of the 2,700 MLtd investors, has brought suit against MLtd, and there only to exercise alleged inspection rights that MLtd never refused to provide.

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following factors which I consider to being critical to the company:

- a. Stratera's ability to perform on a \$5 million loan;
- b. Local presence and familiarity with this market since all projects and investors are local;
- c. Experience as a lender in loans with these unique features; and
- d. Ability to enter into possible additional financing transactions.

26. Stratera met MLtd's requirements and its funding proposal was the most advantageous and favorable among the prospective lenders.

27. MLtd has an urgent need for this DIP Financing. The \$500,000 initial disbursement is critical to the ongoing and immediate needs of the company and the \$4.5 million will satisfy vitally important operational requirements.

DATED: August 6, 2008.

/s/ Richard Feldheim
Richard Feldheim

RICHARD FELDHEIM

EDUCATION

1962	University of Arizona	BSBA
1963	University of Arizona	Masters of Accounting
1967	University of Arizona	JD
1970	New York University	LLM (Taxation)

WORK EXPERIENCE

1963-1964	Price Waterhouse (LA)	Accounting Firm	Staff Accountant Tax Accountant
1967-1970	Price Waterhouse (NY)	Accounting Firm	Tax Attorney
1970-1971	Beekman & Bogue (NY)	Law Firm	Tax Attorney
1971 -1976	Goldman Sachs (NY)	Investment Banking Firm	Vice President
1976-1978	J. Aron	Commodities Firm	Vice President
1978-1984	Wentworth & Lundin	Law Firm	Tax Partner
1985 - 1988	Norcap Financial Corporation	Investment Banking Firm	Co-CEO
1988 - Present	Abbys	Restaurant Company	Co-CEO
1990-2008	Synovics	Pharmaceutical Company	Board member
1996 - Present	Star Resorts	Resort Real Estate Company	Co-CEO

TRANSACTION HISTORY

Technolex Management

Created 5 Trusts and 3 limited partnerships to use as investment vehicles for the acquisition of undeveloped land in the Phoenix metropolitan area.

North American Coin and Currency Corporation (NACC)

NACC was a private company which went into Chapter 11 and came out of Chapter 11 as a public company. Their plan of reorganization included issuance of stock to creditors as a form of payment. Rich Feldheim and his business partner, Mills Sinclair, acquired controlling interest in the company after it emerged from bankruptcy. The name of the company changed to Norcap Financial and operated as an investment banking firm in Phoenix until Fall 1987. It ceased operating as an investment banking firm due to market conditions.

Rich Feldheim and his partner then focused on the acquisition of a 9 store restaurant chain in Oregon known as Abbys. Abbys was acquired in early 1988 and has since grown to 34 restaurants in addition to several Golden Corral and Sonic locations. The company also has gaming licenses issued by the State of Oregon for lottery and other gaming activities at several of its locations. Rich Feldheim

Synovics

Founded predecessor nutroceutical company in 1990 which eventually became Synovics, a public pharmaceutical company. Rich Feldheim served as a Board member from 1990 to 2008.

Star Resorts

Founded development, marketing and sales company for resort real estate. Projects include private residence clubs in Lake Tahoe, Aspen and Stowe. Clients include Aspen Skiing Company (Aspen) and AGI/Lowe Enterprises (Stowe).

Northstar Club

Acquired company (Star Resorts) with busted project in Lake Tahoe. Restructured debt of \$12 million with Textron Financial Corporation, brought in new equity via Starwood Capital, obtained mezzanine financing and completed development which included the changing of general contractor and working through public relations issues with the local community.

First Cabin Club/LH Ventures

Rich Feldheim is the managing member of First Cabin Club and was the managing member of LH Ventures until its interest was sold in 2007.

Acquired newly constructed 30-unit hotel building within the Nautical Inn Resort in Lake Havasu City and converted to timeshare project known as First Cabin Club. Initial projected sales were \$14 million. To date actual sales have exceeded \$20 million. Rich Feldheim is currently managing the loan portfolio for this project with in excess of 300 loans.

In 2006 LH Ventures acquired the Nautical Inn and adjacent 18-hole golf course. The hotel property included 139 hotel rooms, conference center, restaurant, bar and other recreational facilities. The property was acquired for the purpose of repositioning the property and the development into 508 units, 10,000 sf conference facilities, restaurant, bar and improved resort amenities.

ADDITIONAL INFORMATION

1964 – 1970	Certified Public Accountant
1970 – 1978	Member, New York Bar Association
1978 - Present	Member, Arizona Bar Association